

REMARKS

The Office Action mailed July 24, 2003, has been carefully considered. The present amendment is intended to be a complete response thereto and to place the case in condition for allowance.

Claims 108-109 and 112-132 are pending. Claims 1-107, 110-111, and 133-140 have been cancelled. Claims 108 have been amended to replace "systematic diseases causing damage to the corneal epithelium and conjunctiva" with "corneal epithelium damage caused by medication." Support for the amendment to claim 108 is found on page 5, lines 1-5. Claim 109 have been amended to delete association with dry eye.

THE CLAIMS ARE NOT ANTICIPATED

Claims 108-111, 116, 117, 133, 137 and 138 stand rejected under 35 U.S.C. § 102(b) as being anticipated by EP 0312814 (EP '814). Claims 133, 135, 136, 139 and 140 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Levine et al., *PNAS USA*, 90:12040-12044, 1993. Claim 134 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Davis et al. (U.S. Patent No. 5,389,373). The rejections over claims 110-111 and 133-140 are moot because the claims have been cancelled. Applicant respectfully traverses the rejection of claims 108-111, 116, and 117 over EP '814.

To anticipate a claim, the reference must teach every element of the claim. *See* MPEP § 2131. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an

ipsissimis verbis test, i.e., identity of terminology is not required. In re Bond, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

EP '814 fails to teach every element of the claims. In particular, the reference fails to disclose the diseases of claim 108. EP '814 describes the use of phospholipids as a tear substitute material. On page 3, fourth full paragraph, EP '814 states that “[i]t is believed that the film formed from the phospholipid acts as barrier, reducing evaporation of the aqueous layer, thereby preserving the tear film.” Claim 108 relates to a totally different group of eye diseases that are not necessarily involved in the manifestation of dry eye, i.e. the disease may occur even under conditions where there is a natural process of lubrication of the eye. The present invention provides for a healing effect on corneal epithelial cells. The healing effect regenerates cells whenever the cells are lacking or damaged, notwithstanding whether the natural lubrication process within the eye has been damaged. There is no teaching in EP '814 that phospholipids or any other component of the present invention may be used for any other purpose other than the treatment of dry eye.

The Examiner alleges on page 2 of the Office Action that claim 108 is “directed to ‘systematic diseases causing damage to corneal epithelial’ which Sjorgren syndrome (dry eye) is one of the conditions covered under such diseases.” The present amendment has removed the phrase “systematic diseases causing damage to corneal epithelial”. Further, the Examiner alleges that claim 111 is directed to dry eye syndrome. The claim has been deleted in the present amendment. As a matter of fact, the present amendment has deleted all references to dry eye syndrome. The claims are drawn to diseases where the cells are lacking or damaged, not just dry eye. The composition of the present invention provides a healing effect through cell regeneration, not just providing tear substitute as disclosed by the prior art. Therefore, EP '814 cannot anticipate the method claims under 35 U.S.C. § 102(b).

ALLOWABLE SUBJECT MATTER

Applicant gratefully acknowledges the Examiner's indicating that claims 112-115 and 118-132 are free of the prior art and would be allowable if rewritten in independent form.

CONCLUSION

Applicant has responded to the Office action mailed July 24, 2003. A Petition for a one-month extension of time and fee therefor are filed herewith. All of the claims are now believed to be allowable and favorable action is respectfully requested.

In the event that there are any questions relating to this Response or to the application in general, it would be appreciated if the examiner would telephone the undersigned attorney concerning such questions so that the prosecution of this application may be expedited.

Please charge any shortage or credit any overpayment of fees to BLANK ROME LLP, Deposit Account No. 23-2185 (000744-00077). In the event that a petition for an extension of time is required to be submitted herewith and in the event that a separate petition does not accompany this response, applicant hereby petitions under 37 C.F.R. 1.136(a) for an extension of time for as many months as are required to render this submission timely.

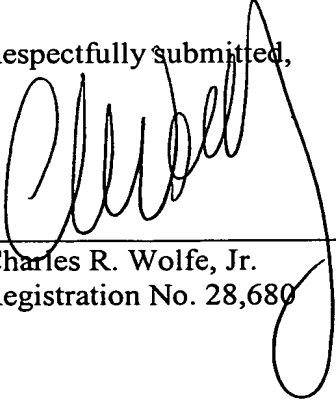
Any fees due are authorized above.

Date: November 24, 2003

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By:

Respectfully submitted,



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